

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

November 6, 2014

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0064
L.A.S.D. File #014-00884-1510-056

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 4, 2014, non-fatal shooting of Jesus Rojo by Los Angeles County Sheriff's Department (LASD) Deputies Jose Hernandez and Ryan Malone. We have concluded that the deputies acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting on February 4, 2014 at 6:40 a.m. The District Attorney Response Team, comprising Deputy District Attorney Gretchen Ford and District Attorney Senior Investigator [redacted] responded to the scene and was given a briefing of the circumstances of the shooting and a walk-through of the scene.

The following analysis is based on reports and recordings submitted by LASD Homicide Detectives Terri Bernstein and Angus Ferguson. The voluntary statements of the deputies were considered in this analysis.

FACTUAL ANALYSIS

Introduction

On February 4, 2014, LASD deputies from Pico Rivera station responded to a public disturbance call at [redacted] Ivy Street in Pico Rivera. They were aware of a prior incident at that residence in which resident Ruben Rojo ("Rojo", 56 years of age, five feet eight inches tall, 182 pounds) had been armed with a machete. The first deputies at the scene were George Madrid, [redacted] and Lisa Gonzalez. Sergeant Pablo Partida, and Deputies Ryan Malone, [redacted] and Jose Hernandez arrived a short time later. Additional deputies from East Los Angeles and Norwalk arrived later, but played no significant role in the incident.

When Deputies Madrid, [redacted] and Gonzalez arrived, [redacted] ([redacted]), Rojo's [redacted] was in front of the residence with visible injuries to her face and head. [redacted] told Deputies Madrid and

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
Fax: (213) 620-1208
WEBSITE: http://da.co.la.ca.us

Gonzalez that she had been struck by Rojo and that she feared for the life of her [redacted] (' [redacted]) who suffered from dementia, was bedridden and was inside the residence with Rojo.

Immediately after the first deputies arrived, Rojo emerged from the front door of the residence with a machete that was approximately three feet long with a straight blade. Rojo was yelling in Spanish and English that he was going to kill the deputies and his [redacted] Rojo went back inside, then began a series of forays in and out of the front door, walking progressively closer to the deputies with the machete raised above his head. Deputy [redacted] deployed a less than lethal shotgun (a shotgun loaded with stun bag cartridges) at Rojo three times, striking him at least twice. Rojo appeared unaffected by the stun bag strikes and did not drop the machete. Rojo retreated into the residence from which deputies heard him shout that he was going to kill them and his [redacted] Because of Rojo's threats to kill [redacted] as well as [redacted] vulnerability, deputies decided to force their way into the house without waiting for further resources.

Deputies surrounded the residence and formed a tactical plan to enter the residence through the back door, which leads to the kitchen.[1] As the deputies used a ram to try to force entry through the kitchen door, Rojo repeatedly slashed out at them through the door with his machete, nearly striking Deputy Hernandez in the face. Deputies broke two windows to create a diversion while they rammed the back door. Rojo attempted to slash Hernandez in the face through one of the broken windows.

Deputies eventually forced their way through the kitchen door and saw Rojo in the doorway between the kitchen and the rest of the house, armed with the machete and an eight to ten inch knife. The deputies entered the kitchen and built a barricade in the doorway separating the kitchen from the rest of the house. Rojo appeared in the interior kitchen doorway again, with both knives, and appeared poised to jump over the barricade. The kitchen was illuminated, but the rest of the house was dark.

Deputy [redacted] deployed his Taser at Rojo, striking him with both darts. Rojo retreated into the hallway and disappeared into the darkness. Deputies [redacted] Hernandez and Malone followed Rojo toward the doorway between the kitchen and the hallway. Hernandez, while still in the kitchen, illuminated the hallway with the flashlight on his firearm and the deputies saw Rojo in the hallway, facing them, with the machete in his right hand and the knife in his left hand. Rojo slashed the machete in an arc, toward all three deputies. The machete blade came within six inches of Hernandez' face. Hernandez believed Rojo was going to decapitate him. While standing in the kitchen near the threshold to the hallway, Hernandez fired nine rounds from his service weapon at Rojo. Malone pursued Rojo toward the living room and fired one round at him.

[1] The front door was protected by wrought iron. The back door was made of wood, making it easier to force open with a ram.

Rojo, who had been struck in the right arm and right thigh, staggered into the living room, dropping the knife along the way. Deputies ran into the living room and found Rojo recumbent on a piece of furniture. Rojo lunged for the machete, which was on the ground, within arm's reach. Hernandez stepped on the machete, then kicked it out of Rojo's range.

Statement of Deputy [redacted]

Deputies [redacted] and Madrid, along with Deputy Gonzalez, were the first deputies at the scene. Deputies [redacted] and Madrid were working patrol as partners. They monitored two disturbance calls regarding [redacted] Ivy Street. The first caller indicated that "Ruben" was shouting inside the house. The second caller indicated that there was a screaming female at the residence. While en route to the residence, Madrid told [redacted] that he had been to the residence previously, and that "Ruben," who lived at the house, had been armed with a machete.

When [redacted] and Madrid arrived at the residence, they saw [redacted] behind the gate to the chain link fence of [redacted] Ivy Street, crying. Madrid and Gonzalez, who arrived at the same time, made contact with [redacted] began to look for Rojo. Before [redacted] saw Rojo, Madrid informed him that he had learned from [redacted] that Rojo had punched her in the face, and that her [redacted] was inside, bedridden.

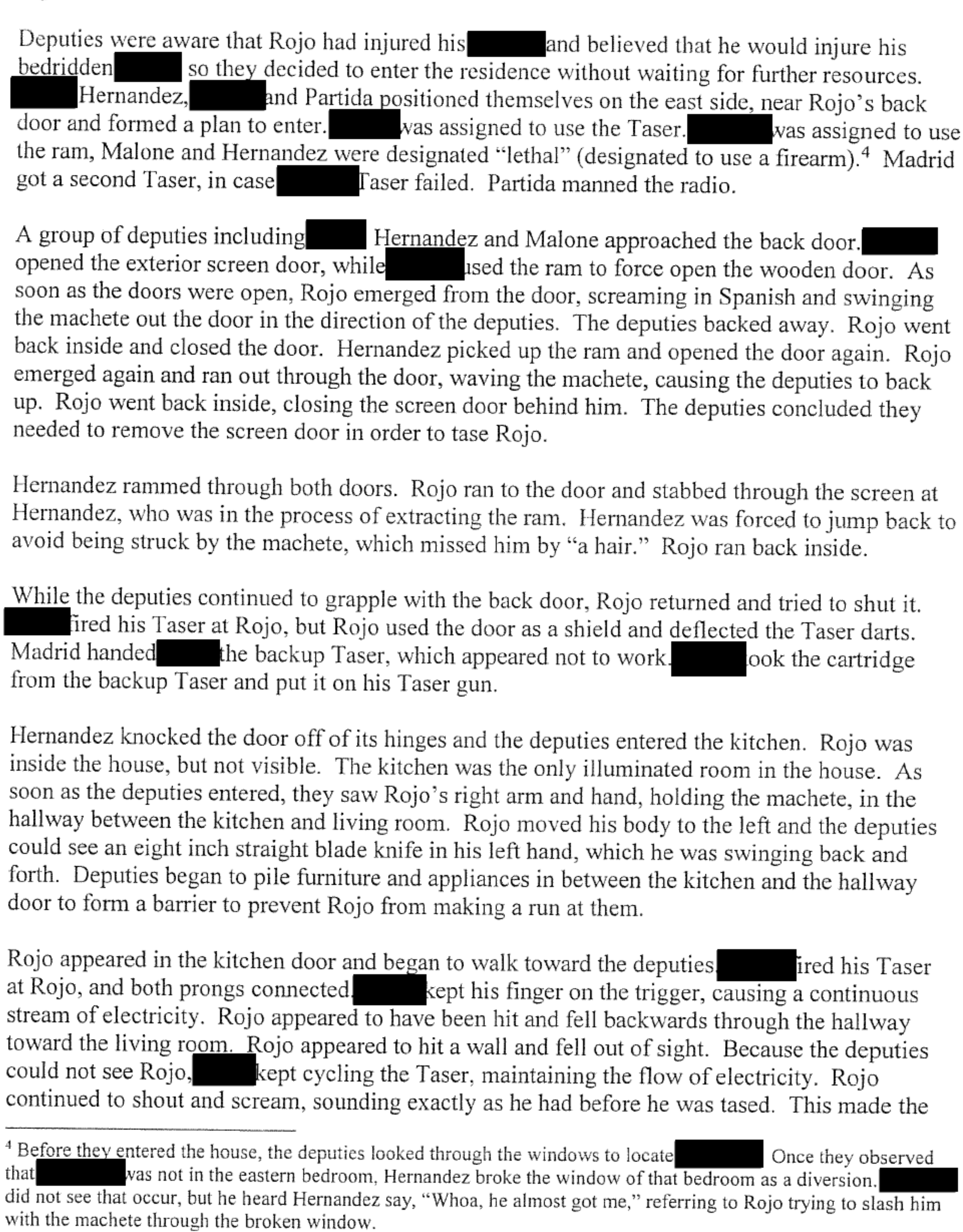
A moment later, [redacted] heard Rojo shouting in English and Spanish from the front door of the residence. Initially [redacted] only saw Rojo from the shoulders up. [redacted] heard a metal "clang," which he believed may have been the sound of a machete making contact with an iron gate. Rojo partially exited the front door, making his entire body visible, with the machete in his right hand. Rojo told the deputies, "Chinga tu madre, get away from my house, get out of here." Throughout the incident, Rojo spoke in a combination of English and Spanish. [redacted] gave Rojo orders a few times in English to drop the machete and to come and talk to the deputies.[2] Rojo responded, "No," and, "Get out of here," and ran back into the house.

[redacted] requested a field sergeant and two additional units. [redacted] held his position and waited for a field sergeant to arrive. Patrol Sergeant Partida arrived alone, Malone, [redacted] and Hernandez arrived next.

[redacted] was armed with a "less than lethal" shotgun, which was loaded with stun bag cartridges. Rojo re-emerged from the front door and walked halfway to the gate that separated him from the deputies. Rojo was still armed with the machete. Partida told [redacted] to fire the stun bag shotgun at Rojo. [redacted] believed [redacted] shot at Rojo three times, striking him at least twice with stun bags. Rojo appeared unaffected by the stun bag, and did not drop the machete. Rojo backed up then ran back into the house. [redacted] and Hernandez ran to the west side of the property to prevent Rojo from exiting. Madrid and Malone positioned themselves on the east side of the property to contain the back door. Madrid described seeing Rojo running from room to room.[3]

---

[2] Rojo is fluent in English, as evidenced by his interview with Detectives Ferguson and Bernstein.
[3] It was not stated whether that was communicated by radio or voice.



Deputies were aware that Rojo had injured his [redacted] and believed that he would injure his bedridden [redacted] so they decided to enter the residence without waiting for further resources. [redacted] Hernandez, [redacted] and Partida positioned themselves on the east side, near Rojo's back door and formed a plan to enter. [redacted] was assigned to use the Taser. [redacted] was assigned to use the ram, Malone and Hernandez were designated "lethal" (designated to use a firearm).[4] Madrid got a second Taser, in case [redacted] Taser failed. Partida manned the radio.

A group of deputies including [redacted] Hernandez and Malone approached the back door. [redacted] opened the exterior screen door, while [redacted] used the ram to force open the wooden door. As soon as the doors were open, Rojo emerged from the door, screaming in Spanish and swinging the machete out the door in the direction of the deputies. The deputies backed away. Rojo went back inside and closed the door. Hernandez picked up the ram and opened the door again. Rojo emerged again and ran out through the door, waving the machete, causing the deputies to back up. Rojo went back inside, closing the screen door behind him. The deputies concluded they needed to remove the screen door in order to tase Rojo.

Hernandez rammed through both doors. Rojo ran to the door and stabbed through the screen at Hernandez, who was in the process of extracting the ram. Hernandez was forced to jump back to avoid being struck by the machete, which missed him by "a hair." Rojo ran back inside.

While the deputies continued to grapple with the back door, Rojo returned and tried to shut it. [redacted] fired his Taser at Rojo, but Rojo used the door as a shield and deflected the Taser darts. Madrid handed [redacted] the backup Taser, which appeared not to work. [redacted] took the cartridge from the backup Taser and put it on his Taser gun.

Hernandez knocked the door off of its hinges and the deputies entered the kitchen. Rojo was inside the house, but not visible. The kitchen was the only illuminated room in the house. As soon as the deputies entered, they saw Rojo's right arm and hand, holding the machete, in the hallway between the kitchen and living room. Rojo moved his body to the left and the deputies could see an eight inch straight blade knife in his left hand, which he was swinging back and forth. Deputies began to pile furniture and appliances in between the kitchen and the hallway door to form a barrier to prevent Rojo from making a run at them.

Rojo appeared in the kitchen door and began to walk toward the deputies. [redacted] fired his Taser at Rojo, and both prongs connected. [redacted] kept his finger on the trigger, causing a continuous stream of electricity. Rojo appeared to have been hit and fell backwards through the hallway toward the living room. Rojo appeared to hit a wall and fell out of sight. Because the deputies could not see Rojo, [redacted] kept cycling the Taser, maintaining the flow of electricity. Rojo continued to shout and scream, sounding exactly as he had before he was tased. This made the

---

[4] Before they entered the house, the deputies looked through the windows to locate [redacted] Once they observed that [redacted] was not in the eastern bedroom, Hernandez broke the window of that bedroom as a diversion. [redacted] did not see that occur, but he heard Hernandez say, "Whoa, he almost got me," referring to Rojo trying to slash him with the machete through the broken window.

deputies uncertain whether or not Rojo was still being tased, so they proceeded with caution toward the living room.

Malone and Hernandez entered the hallway first. Rojo was invisible in the darkness. Rojo was still shouting that he was going to kill someone and that the devil was telling him to do it. Rojo's voice could be heard from the direction of the living room, and he sounded some distance from the hallway. [redacted] Hernandez and Malone began moving cautiously toward the hallway.

Hernandez turned on his flashlight. At that instant Rojo appeared, standing in the doorway from the living room into the hallway and he was swinging one of the knives. [redacted] saw Rojo's arm and the machete come downward in a big sweeping motion, just missing Hernandez. The machete struck [redacted] hand. Hernandez was not struck because he had flinched out of the way.

The blade of the machete connected with [redacted] right arm, near his wrist, and flung his arm backward.[5] The blade slid off of [redacted] jacket, which protected his skin from being struck. As Rojo swung, [redacted] heard shots being fired. [redacted] had turned away from Rojo to gain some distance, and did not see the shooting. [redacted] heard the shots and saw muzzle flashes.

Rojo fell back into the living room. Malone and Hernandez entered the living room to avoid losing sight of Rojo. [redacted] could not see Rojo, who was on the other side of the living room wall. [redacted] heard Hernandez shout from the living room, "He's jumping for the machete again!" [redacted] ran into the living room, put the Taser in his other hand and took out his firearm. When [redacted] entered the living room he saw Hernandez taking the machete away from Rojo. Rojo turned onto his stomach, but kept his left arm under his body, preventing deputies from handcuffing him. [redacted] did not see the knife at that time.

Statement of Deputy Jose Hernandez

Hernandez and his partner, [redacted] Deputy [redacted] responded to the Ivy Street residence.[6] As Hernandez and [redacted] exited their vehicle, they heard a deputy yelling for a stun bag shotgun. [redacted] armed himself with a stun bag shotgun. Almost simultaneously, Rojo emerged from the front door with a machete in his right hand. Rojo was yelling a mixture of Spanish and English including the words, "Yo voy a matar." Hernandez, who speaks Spanish, understood those words as, "I'm going to kill you," or "I'm going to kill him." Hernandez' description of Rojo's advances on the deputies and [redacted] deployment of the stun bag shotgun was substantially similar to the descriptions given by Deputies [redacted] and [redacted].

---

[5] It was not stated which part of the blade struck [redacted] arm.

[6] At times, Hernandez is unclear about or fails to specify whether he is referring to the hallway or the living room beyond it. Hernandez' ability to evaluate the layout of the house was very limited because he had little opportunity to see it in the light. When Hernandez entered the kitchen, it was the only illuminated room in the house. He could not see the darkened rooms beyond the kitchen except by using his flashlight. After Hernandez fired his weapon in the kitchen, he passed quickly through the hallway and into the living room. After Rojo was subdued, Hernandez exited through the front door and never re-entered the residence.

Hernandez was assigned to use the pick and ram. Hernandez joined Malone [redacted] Madrid, Partida and [redacted] at the northeast corner of the property. Meanwhile, Rojo was sticking his head out of the back door, waving the machete out the back door, and coming to the windows. Hernandez saw that he was armed with two knives, the machete in his right hand, and an eight to twelve inch knife in his left hand. Rojo was screaming and continued to say that he was going to kill his [redacted] and the deputies. The deputies tried to position themselves outside Rojo's line of fire in case Rojo had a gun.

Hernandez rammed the kitchen doors open. The doors immediately closed again. Hernandez rammed the doors open again, and as soon as the ram struck the door, Rojo plunged the machete through the screen, aiming directly at Hernandez' hands. The machete struck either the ram or Hernandez' hand. Hernandez either leapt backwards or was pulled backwards by other deputies, and narrowly missed being struck by the machete. Hernandez travelled backwards ten to twenty feet and fell on the screen door that had just been removed.

Hernandez armed himself with the pick in order to break the northern bedroom window to lure Rojo away from door. Rojo could be heard from inside the house shouting about killing "him" and the deputies and about Satan. When Hernandez broke the window, Rojo stabbed out at him with the machete through the window while Hernandez was within striking distance. Hernandez backed away from the window and Rojo ran into the hallway. Hernandez picked up the ram and hit the door hinges, knocking the door completely off. Malone said he could see Rojo's arm with the machete in the hallway, but could not see the rest of him.

Once the deputies entered the kitchen, they saw Rojo appearing and disappearing in the kitchen doorway. Rojo was showing more and more of himself in the kitchen doorway. Hernandez flipped a kitchen table over to create a barricade between the kitchen and the rest of the house. Hernandez did not know the layout of the house. Rojo emerged again in the doorway, and looked as though he was going to come over the table. Following Partida's instructions, [redacted] tased him again and Hernandez saw both darts connect. Hernandez heard the Taser cycling. Rojo retreated toward the hallway, out of sight. Hernandez heard what sounded like Rojo falling.

The deputies approached the doorway between the kitchen and the hallway. [redacted] cycled the Taser again. The hallway was completely dark. As soon as Hernandez got near the doorway, he turned his flashlight on and saw Rojo in the doorway between the kitchen and hallway approaching him with the machete in his right hand and the knife in his left hand. Rojo swung the machete in an arc that travelled down and across Hernandez' body. Hernandez thought he was going to be hit in his face or neck and believed Rojo was going to cut his head off. Hernandez backed up a few inches, "enough to save [his] life." When the machete passed within six inches of Hernandez' face, Hernandez fired his department issued firearm at Rojo approximately four to six times. Hernandez shot from inside the kitchen.

After Hernandez fired his weapon, Rojo ran into the living room, still in possession of the knife and the machete. Hernandez entered the living room where the only light was the illumination

from his flashlight. He saw Rojo being propped up by an unknown object. Hernandez could see Rojo's face, and that Rojo had been shot in the stomach or arm. Rojo was still holding what Hernandez described as a "metal object," and Hernandez yelled at him to put it down.[7] Suddenly, Rojo "came back to life," saying "weird stuff." Hernandez did not see Rojo drop the smaller knife.

Suddenly, Rojo dove to the ground, toward the machete. Rojo's shoulder fell on the machete, then he reached for it with his right hand. Hernandez intended to shoot Rojo in the head if Rojo got his hand onto the machete. As Rojo touched the machete, Hernandez stepped on it and kicked it out of his reach. Other deputies contained Rojo, and Hernandez placed the machete outside the door. Hernandez exited through the front door and never re-entered the residence.

It was later determined that Hernandez fired nine rounds.

Statement of Deputy Ryan Malone

When Deputy Malone arrived at the residence, he saw [redacted] outside, upset and crying. Rojo was in the doorway of the house yelling in Spanish. Rojo appeared agitated and animated. Rojo raised the machete and said, "Fuck you, fuck you." Malone urged Rojo to drop the machete. Rojo responded by saying, "I'm going to fucking kill you." Partida and additional assisting units arrived and Rojo went back inside. Malone was briefed on what had occurred up until that point, including the fact that Rojo had assaulted [redacted] that [redacted] was inside and could not walk, and that [redacted] was afraid for his [redacted] because Rojo had previously abused him.

Malone, realizing that there were no deputies at the back of the residence, positioned himself with Madrid near the back door. Rojo opened the back door and began saying, "Fuck you," and "Get the fuck out of here." As Rojo opened the back door, he looked at Malone and Madrid, and began making forward thrusting motions and overhand swipes with the machete. Rojo thrust the machete forward three times and made two overhand swipes with the machete. Rojo went inside and closed the door. Malone was the deputy closest to Rojo at that point, at a distance of approximately thirty feet.

Rojo exited the back door again, cursing at the deputies. Rojo went back inside and he could be heard through back bedroom window saying, in English, "I'm gonna kill him."

Malone was approximately seven feet from the back door when it was rammed open, and he saw Rojo lunge forward with the machete and thrust it through the doorway. The machete missed Hernandez by two to three feet. Before deputies entered the kitchen, Malone saw Rojo in the hallway, approximately twenty feet away, just behind the wall. The only visible portions of Rojo was his right hand, holding the machete, and part of his right leg. His body faced the deputies. Deputies ordered him to drop the knife and to give up. Rojo yelled about Satan, about killing "him," and appeared to be uttering his last rites.

---

[7] Hernandez did not know whether or not the metal object was a knife.

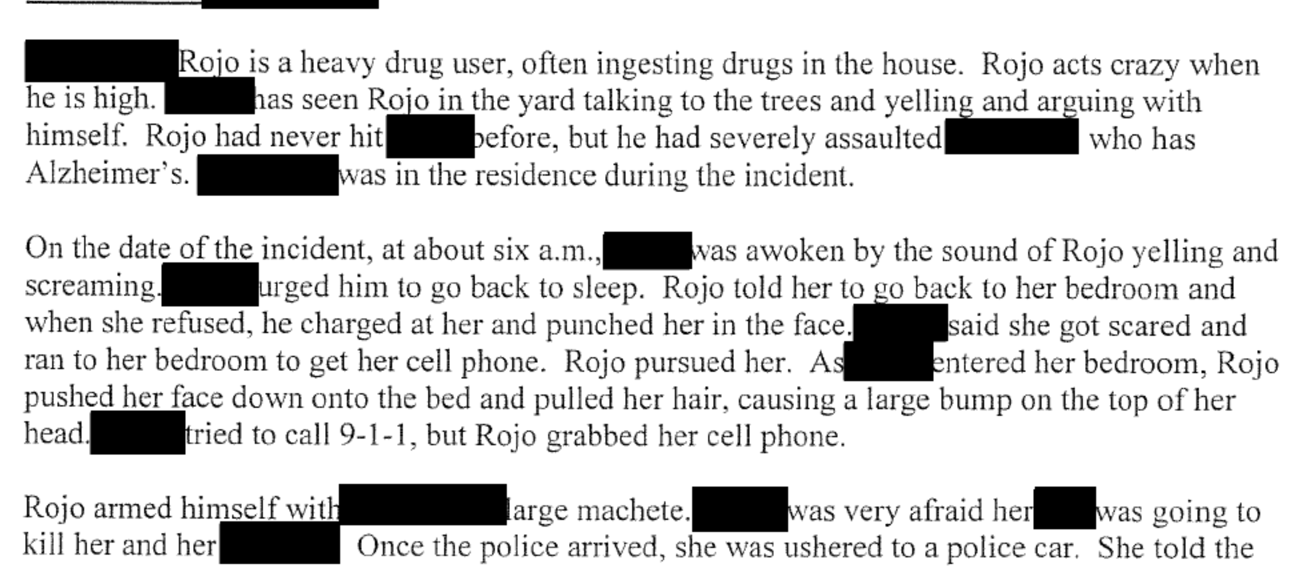
The deputies entered the kitchen and made a barricade between the kitchen and hallway to slow Rojo down. The barricade was intended to allow the deputies more time to react and decrease the likelihood they would need to use lethal force. Malone, who was assigned to use a firearm, went first. The deputies entered and created the barricade in the interior kitchen doorway. As the deputies backed away from the barricade, Rojo came forward and began to step over the barricade. [redacted] fired his Taser again, striking Rojo with both darts. Rojo fell into the living room out of sight.

Malone, [redacted] and Hernandez stepped up to the doorway of the hallway. Malone was in the middle of the doorway, with Hernandez to his left and [redacted] to his right, slightly behind, holding the Taser. As they neared the doorway, Rojo jumped out of the dark, swinging the machete with his right hand in a sideways motion. Rojo still had the knife in his left hand. Malone estimated the knife to be ten inches long. The machete swung toward Hernandez' face and almost hit him. The blade also came less than a foot from Malone's upper chest and neck. The blade ultimately struck [redacted] on the arm. As Rojo swung the machete, Malone fired one round. Rojo moved behind a wall, out of sight, so Malone did not fire any more rounds.

Rojo could be heard moaning, and it sounded like he was some distance into the living room. Malone and Hernandez entered the room. Rojo was lying backward, propped up, on top of something. Rojo had his hands tucked into his stomach area. Hernandez ordered him to "Drop it, drop it." Malone did not see the machete in Rojo's hand. However, Malone continued to hold Rojo at gunpoint because Rojo still had the other knife in the hallway. Rojo turned onto his hands and knees and reached with one hand for the machete, which was about three feet in front of him. Hernandez jumped over Rojo's head, stepped on the machete and kicked it away from Rojo.

It was established that Malone fired one round.

Statement of [redacted]



[redacted] Rojo is a heavy drug user, often ingesting drugs in the house. Rojo acts crazy when he is high. [redacted] has seen Rojo in the yard talking to the trees and yelling and arguing with himself. Rojo had never hit [redacted] before, but he had severely assaulted [redacted] who has Alzheimer's. [redacted] was in the residence during the incident.

On the date of the incident, at about six a.m., [redacted] was awoken by the sound of Rojo yelling and screaming. [redacted] urged him to go back to sleep. Rojo told her to go back to her bedroom and when she refused, he charged at her and punched her in the face. [redacted] said she got scared and ran to her bedroom to get her cell phone. Rojo pursued her. As [redacted] entered her bedroom, Rojo pushed her face down onto the bed and pulled her hair, causing a large bump on the top of her head. [redacted] tried to call 9-1-1, but Rojo grabbed her cell phone.

Rojo armed himself with [redacted] large machete. [redacted] was very afraid her [redacted] was going to kill her and her [redacted] Once the police arrived, she was ushered to a police car. She told the

deputies at the scene that she was worried that Rojo was going to kill her [redacted] From the police car, [redacted] saw Rojo exit the house with the machete.

Statement of Jesus Rojo

Rojo provided a disjointed, rambling statement about the incident. Rojo indicated that he is the caregiver for both of his [redacted] and that although his [redacted] is mobile, she cannot be left alone. Rojo indicated that this incident was not the first time that someone has called the sheriffs and claimed that Rojo was abusing his [redacted]

On the night of the incident, "everything went wild" and Rojo was "confused for his head, too." Rojo started feeling pain, took a good look, and saw that the deputies were shooting him with a Taser and a stun bag. Regarding the stun bag, Rojo believed he was hit four times in the "butt" and groin.

After that, the deputies started breaking the windows of his residence while he was standing there. Glass fell into his [redacted] room while she was inside the house. Regarding [redacted] black eye, Rojo denied that he hit her, and claimed that she must have fallen. Rojo might have taken [redacted] cell phone from her and told her not to call anyone.

Rojo claimed that he uses the machete for his employment at a ranch, and that it is usually kept in his truck. Rojo did not know why he brought it home that night. Initially, Rojo denied that he uses drugs, then admitted that he had used methamphetamine earlier on the date of the incident.

Rojo indicated that he told the deputies that he did not want them in the house. Rojo had the kitchen knife to prevent anything from happening. Rojo explained that he stuck the machete through the door at the deputies because he asked them not to take the door off, and not to scare his [redacted] [redacted] or him. Rojo conceded he might have put the machete through the door to scare the deputies. Rojo denied having previously assaulted his [redacted]

Rojo was transported to the Los Angeles County USC Hospital emergency room for gunshot wounds to his right leg and right arm. A Taser dart was removed from his left hand. Two rounds had penetrated his right arm, one round penetrated his right thigh, and one round entered his abdomen. No expended rounds were recovered.

Rojo was charged in case number VA133784 as follows: Count One, Penal Code (PC) section 245(a)(4) (assault likely to produce great bodily injury, victim [redacted]), Count Two, PC section 245(c) (assault upon a peace officer, victim Deputy Hernandez), Counts Three through Six, PC section 422(a) (criminal threats, victims Deputies Hernandez [redacted] Madrid and Malone), Count Seven: PC sections 664 and 187 (attempted murder with premeditation and deliberation, victim Deputy Hernandez), Counts Eight through Ten: PC section 245(c) (assault upon peace officers, victims Deputies Hernandez, [redacted] and Malone).

<u>**The Crime Scene**</u>

1. The Stun Bag Shotgun

Two deployed stun bags were recovered from the front walkway of [redacted] Ivy Street, near the front door of the residence. A third deployed stun bag was recovered inside the living room door.

2. The Taser Wires

There were two sets of Taser wires at the crime scene. One pair of wires ran from outside the kitchen door into the kitchen. Of those two, one wire terminated in a dart that had a wooden fragment attached to it. There was another set of Taser wires in the living room.

3. Ballistic Evidence

Ten casings were recovered from the kitchen. Four were near the door to the hallway, and the other six were distributed throughout the kitchen.

Seven projectiles or portions of projectiles were recovered in the living room. Three were recovered along the eastern wall, two were recovered in the middle of the living room floor, one was recovered from a chair that was adjacent to the wall separating the hallway and the kitchen, and one was found in the southern part of the living room ceiling.

4. Knives

A large machete was recovered from the front walkway. A large kitchen butcher knife was recovered in the living room, near the door to the hallway. A folding buck knife was recovered in the middle of the living room floor.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense if the person claiming the right of self-defense actually and reasonably believed that he was in imminent danger of great bodily injury or death. *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also* CALCRIM No. 505. In general, the same legal principles apply to the use of deadly force in defense of another person. CALCRIM No. 3470.

From the moment Rojo appeared in the doorway of his residence, he presented a potentially lethal threat to both his [redacted] inside the residence, and to the responding deputies. Rojo had a machete clearly visible and potentially had additional weapons available inside his residence. Furthermore, from the outset, Rojo announced his intention to kill his [redacted] and the deputies. Deputies immediately learned that Rojo had assaulted his [redacted] before their arrival and that she feared for [redacted] life. Rojo appeared irrational and highly aggressive throughout the events.

Nonetheless, the deputies used less than lethal force as well as strategies conceived to avoid the use of lethal force for as long as possible. Initially, when Rojo was moving toward the deputies in his front yard, with his machete poised, the deputies used the stun bag shotgun, which affected Rojo very little. At the back door, when Rojo repeatedly tried to stab Hernandez with the machete, the deputies resorted to the Taser on two occasions, which did not prevent Rojo from continuing to attack. Once the deputies entered Rojo's home, they were in an unknown, contained space, littered with excess furniture and other debris. Rojo continually retreated into the darkness, potentially harming his [redacted] and potentially arming himself with additional weapons. When Rojo leapt out of the darkness swinging his machete at the deputies, he was close enough to decapitate them. The use of potentially deadly force was therefore justified when Deputies Hernandez and Malone shot him.

CONCLUSION

The evidence examined shows that Ruben Rojo threatened to kill both his [redacted] and the responding deputies and that he assaulted Deputies Hernandez, Malone and [redacted] with the machete. In reasonable fear of great bodily injury or death to themselves, their fellow deputies and [redacted] Deputies Hernandez and Malone fired their service weapons, striking Rojo.

Based on the foregoing, we find that Deputies Jose Hernandez and Ryan Malone acted in lawful self-defense, in defense of the other deputies at the incident, and in defense of [redacted] We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

Gretchen Ford
Deputy District Attorney
(213) 974-3888

c: Deputy Jose Hernandez #[redacted]
Deputy Ryan Malone #[redacted]